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May 22, 1996

Secretary
Federal Communications Commission
1919 "M" Street, N.W.
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: RM-8770 Docket No. 96-76

Dear Secretary:

Enclosed is a signed original and five copies of my "Comments and Counter-Proposal for the Amendment of Section 73.202(b) Table of Allotments for a Second FM Broadcast Station at Nekoosa, Wisconsin"

If there are any questions, please contact the undersigned at (414) 794-8791.

Sincerely,



Mark Heller
1414 16th Street
Two Rivers, Wisconsin 54241-3031.

RECEIVED
MAY 24 1996
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C 20554

In the Matter of:

Notice of Proposed Rulemaking
Amending Section 73.202(b) of the
Table of Allotments, FM Broadcast Stations
(Nekoosa, WI)

FILED

MAY 24 1996

FCC MAY 24 1996

RM-8770 MM Docket No. 96-76

To: John A. Karousos
 Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

**COMMENTS AND COUNTER-PROPOSAL REGARDING THE PROPOSED
ALLOTMENT OF A SECOND FM CHANNEL AT NEKOOSA, WISCONSIN**

Comes now, Mark Heller, an individual, (hereinafter "Heller") with comments on the proposed rule making of the allotment of a second FM channel at Nekoosa, Wisconsin, a community of 2,557 people, who would now enjoy a third aural service to its community...with neither the existing AM construction permit, nor the existing FM construction permit for that community that have already previously been approved, ever being built. Heller offers a Counter-Proposal with these comments.

That, on November 6, 1995, Mark Heller, as President of WTRW Incorporated, licensee of WTRW-AM in Two Rivers, Wisconsin, asked the Commission to cancel the construction permit of WCAE-AM (BP-850122AG as modified by BMP-941121DA) in Nekoosa, as it was not built. WCAE-AM and WTRW-AM are co-located on 1590 KHz, and WTRW complained that it cannot make improvements to its signal with the unbuilt AM construction permit lingering for over four years. The Commission has yet to act on WTRW's request.

THE CONSULTANT TO THE PETITIONER, "THE RADIO COMPANY" HAS A LONG AND ESTABLISHED RECORD OF PROPOSING RADIO STATION FREQUENCIES WHICH HAVE NOT BEEN BUILT, DUE TO EITHER "LACK OF FINANCES", OR TO A "LACK OF INTEREST"

Heller, as President of a radio station on 1590 KHz at Two Rivers, Wisconsin has examined the application of WCAE-AM (BP-850122AG, as modified by BMP-941121DA) in Nekoosa, Wisconsin and cannot understand why the station is not constructed. The costs involved in constructing a simple, relatively short single tower, daytime AM station at Nekoosa at a mere 500 watts, would only be a fraction of costs involved in the construction of 300+ foot towers with FM bays atop with FM transmitters of 6,000 watts or more. Additionally purchasing a small power AM transmitter would only be a fraction of the cost of a high-powered stereo FM operation. Yet, Nekoosa now has existing and extended Construction Permits for an AM and FM, both engineered by Lyle Robert Evans, that remain unbuilt. It appears that Evans is actively involved to this day in maintaining the Construction Permits for its' Grantees, which remain unbuilt. There are no FAA problems, nor zoning problems with the AM site, according to Heller's personal investigation

THE HISTORY OF "NO CONSTRUCTION" IS EXTENSIVE AND COVERS MORE THAN ONE STATE AND COVERS BOTH TELEVISION AND RADIO BROADCAST SERVICES FOR A PERIOD OF OVER SEVEN YEARS

Evans seems to have a proficiency of proposing stations in areas, simply where there is no market, or a limited market. Among his proposals, include an AM radio station at Mayville-Horicon, Wisconsin at 990 KHz, which was unbuilt. Beyond the above mentioned Nekoosa failures, there remains an unbuilt FM station at Wautoma, Wisconsin, (BPH-880421NZ) which was engineered by Evans, Evans also holds an unbuilt construction permit for a FM station at Stephenson, Michigan on Channel

292C2 (106.3Mhz - WFON) (BPH-910719MB); Evans holds an unbuilt construction permit for a FM station at Birnamwood, Wisconsin on Channel 225A (92.9Mhz -WHET) (BPH-920512MB); and Evans holds an unbuilt construction permit for a FM station at Crystal Falls, Michigan on Channel 254C1 (100.7Mhz) (BPH-891010KF)

In the Television field, Evans is a 75% owner of an application for a new UHF channel 34 at Eagle River, Wisconsin; and previously held a 49% interest in a VHF construction permit for channel 5 at Calumet, Michigan (BMCT-890222KF). After eight years of being involved in the application of this construction permit, the permit was cancelled by Commission action in December, 1991. There was no construction attempted.

EVANS TELLS THE COMMISSION THAT HE IS BUYING A CONSTRUCTION PERMIT AT MAYVILLE, WISCONSIN, YET, EITHER REFUSES OR IS UNABLE TO BUILD THE PROJECTS HE ALREADY HAS

In a response to a proposed sale of a Television Construction Permit at Mayville, Wisconsin, Evans states recently, to the best of his belief, that he is planning to buy an existing unbuilt FM construction permit from Molly Huth (BPH-880217MJ) (WMVM-FM). The statement is provided as Exhibit "A". In December, 1995, Evans stated in his Declaration, "We are in the process of finalizing my purchase of that permit. Once that agreement has been documented, we will file a request for the assignment of that permit with the Commission". Evans further states, "However, once the FCC approves the sale of the permit to me, and the pending modification application, I expect that the station can quickly be built, as I stated in the newspaper article in the 'Daily Citizen' ". Evans, for some unknown reason, has now put the purchase of a Mayville, Wisconsin Construction Permit at the top of his priority list for construction, ahead of his other Construction Permits which are not being constructed, and in fact, being ignored. Six months have passed, and no purchase agreement is on file at the Commission.

**A REVIEW OF LIENS, JUDGMENTS AND OTHER ATTACHMENTS FOR EVANS'
EXISTING OPERATIONS MAY MAKE THE FINANCING OF ANY OF HIS PROJECTS
IMPOSSIBLE**

That, Heller has visited on April 22, 1996 the Calumet County, Wisconsin Courthouse and learned that Lyle Evans, personally has liens of over \$28,900.00 and an additional \$17,200 is recorded to Evans' FM Radio Station (WEZR-FM) at Brillion, Wisconsin, Evans' interest in an AM Radio Station (WMBE-AM) at Chilton, Wisconsin and an associated radio syndication company which operated as Pacer Radio of Wisconsin. A listing of the liens, judgments and docketed claims are attached as Exhibit "B".

HELLER HAS PREVIOUSLY COMPLAINED TO THE COMMISSION OF APPLICANTS WHO HOLD UNBUILT CONSTRUCTION PERMITS FOR AN OVERWHELMING PERIOD OF TIME IN WISCONSIN, THUS, ALLOWING THE GRANTEES TO SELL THE PERMITS, ALL OF WHICH HAD TIES TO LYLE EVANS, OR HAD ITS' ENGINEERING PERFORMED BY EVANS...BUT, HELLER NOW BELIEVES HE HAS FOUND A PATTERN OF "ANTI-COMPETITIVE TREACHERY" IN THE SYSTEMATIC PETITIONING OF ALLOTMENTS WHICH WOULD HAVE A NEGATIVE EFFECT ON EVANS' COMPETITORS IN THE GREEN BAY- APPLETON, WISCONSIN RADIO MARKET, WHERE LYLE EVANS OWNS A SMALL 6,000 WATT FM RADIO STATION

Heller states, that Evans is systematically attempting to preclude his competitors of ever seeking better tower sites, or moving at any time in the future, by proposing FM channels which are tightly close-spaced or placed adjacent to a short-space condition to a great number of stations which are in direct day-to-day competition with Evans' WEZR-FM (107.5 MHz) at Brillion, Wisconsin.

That, Evans was the Petitioner in a recent Proposed Rule Making for a second FM radio station at Two Rivers, Wisconsin which is just short and nearly adjacent to a short-space condition to his competitor WQLH-FM at Green Bay, WI, as well as create interference to an existing station on 98.1 MHz with 4 826 watts of power at Cleveland, WI (WKTT-FM).

That, Evans authored a recent Proposed Rule Making for a first FM radio station at Forestville, Wisconsin, a community of 470 people, and proposed a tower site just short and nearly adjacent (0.01 km) to a short-space condition to preclude his competitor, who is a holder of a Construction Permit of a new FM (WECB) at Seymour, Wisconsin (BPH-880217ML) of being able to seek any improvement either in its' tower site or power.

That, Evans is proposing to locate his proposed tower site just short and nearly adjacent to a short-space condition in the second FM Nekoosa Rule Making, to adversely affect his competitor WAPL-FM in Appleton, Wisconsin.

That, Heller reiterates his own frustration, as President of WTRW Incorporated, licensee of WTRW-AM in Two Rivers, Wisconsin that Evans' client, Nekoosa Broadcasting Company's has impeded WTRW from seeking an improvement in its' signal.

That, Heller understands that current FCC policy states, once a Proposed Rule Making is undertaken, all broadcast facilities are precluded from seeking any improvement in their operation, such as a better tower site, or power increase. Heller believes that all the recent proposed Rule Makings at Two Rivers, Forestville and Nekoosa, Wisconsin are meant to "wreak" some type of vengeance to the competing radio stations which operate in Evans' market, specifically, stations in Green Bay, Appleton, Seymour, Two Rivers and Cleveland, Wisconsin.

That, Heller states that much of the State of Wisconsin and the Upper Peninsula of the State of Michigan is "littered" with Construction Permits granted to Lyle Evans or his "clients" and other Proposed Rule Makings petitioned by Lyle R. Evans, which are not intended to serve the Public's Interest, but rather designed to frustrate competitors of Lyle R. Evans' radio stations in Northeast Wisconsin.

THE COMMISSION SHOULD NOT ALLOW THE SECOND FM SERVICE TO NEKOOSA, WISCONSIN, AS IT IS NOT IN THE PUBLIC'S INTEREST. THE COMMISSION IS BEST ABLE TO SERVE THE COMMUNITY OF NEKOOSA, WISCONSIN BY DELETING THE EXISTING FM CONSTRUCTION PERMIT, AS WELL AS THE EXISTING AM CONSTRUCTION PERMIT, WHICH REMAINS UNBUILT FOR MANY YEARS

Heller states that by maneuvering around the FCC policy and rules, Evans and his applicants have been able to keep the two existing Nekoosa Construction Permits dormant for many years, without any investment, construction, or any progress whatsoever. Heller believes that if the community of Nekoosa, Wisconsin and the surrounding area is best served by any broadcast service, it should be from the existing assignments, which remain unbuilt. A third assignment is unwarranted, unless the first two Construction Permits are built and on-the-air. Heller believes that a grant of a third aural service to Nekoosa, would be unprecedented with the Commission knowing of these dormant assignments.

Heller complains that the Commission is too liberal in its' allowing these Construction Permit grants to lay dormant at the cost of the community it should serve, as well as the broadcasters that are precluded from making any improvements to their existing and operating stations, due to near close-spacing conditions present.

HELLER'S COUNTER-PROPOSAL IS UNIQUE, AND SHOULD BE SERIOUSLY
CONSIDERED FOR ADOPTION BY THE COMMISSION IN THIS RULE MAKING
PROCEDURE AS IT SIMPLY MAKES GOOD "COMMON SENSE".

Heller thinks it is time for the Commission to perform "House Cleaning" in it's
protection of unused Construction Permits, and counter-proposes to delete the
following assignments in Wisconsin and Michigan, for Good Cause:

<u>City:</u>	<u>Proposed:</u>	<u>Counter-Proposed:</u>
Nekoosa, WI	229A, 288A	Delete 288A in its' entirety <u>and</u> Cancel Construction Permit for (BPH-880519OG) Berry Radio's unbuilt FM at Nekoosa. (WXEC-FM)
Birnamwood, WI	225A	Delete Construction Permit for (WHET-FM) (BPH-920512MB) Pacer Radio of Mid Wisconsin's unbuilt FM at Birnamwood.
Wautoma, WI	226A	Delete Construction Permit for (WAEI-FM) (BPH-880421NZ) Wautoma Radio Company's unbuilt FM at Wautoma, Wisconsin, which deletion was proposed previously.

City:

Nekoosa, WI

Proposed:

1590 Khz - AM

Counter-Proposed:

Delete Construction
Permit for (WCAE-AM)
(BMP-941121DA)
Nekoosa Broadcasting
Company's unbuilt AM at
Nekoosa, Wisconsin,
which deletion was
proposed previously.

Crystal Falls, Michigan

254C1

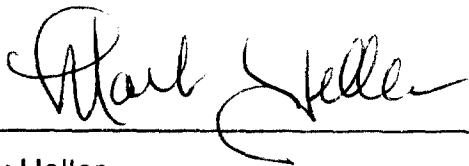
Delete Construction
Permit (BPH-891010KF)
for station which Evans
controls, and remains
unbuilt.

Stephenson, Michigan

292C2

Delete Construction
Permit (BPH-920512MB)
for station which Evans
controls, and remains
unbuilt. (WFON-FM)

Heller states that the Public's Interest would be best served by deleting the Construction Permits, and allowing "real and qualified" people apply for same. That, the delay tactics for stations that remain unbuilt are not in the Public's Interest, and is good cause for adopting the foregoing Counter-Proposal.



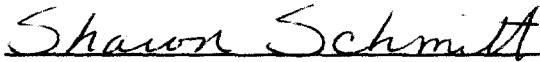
Mark Heller

1414 16th Street
Two Rivers, WI 54241
(414) 794-8791

May 22, 1996

Subscribed and Sworn before me this 22nd day of May, 1996

(seal)



Notary Public. My commission expires 12/20/98.

EXHIBIT A.Declaration of Lyle Robert Evans

I, Lyle Robert Evans, do hereby declare under penalty of perjury, to the best of my knowledge, information and belief, the following:

2. I am employed as a consulting engineer and broadcast consultant by a number of broadcasters throughout the country, and my qualifications are known to the FCC. I have prepared many applications which have been processed and approved by the FCC. In addition to my consulting practice, I have ownership interests in a number of companies with broadcast interests, including companies which operate Station WENZ-FM, Brillion, Wisconsin (FCC File No. BLH-930317KA) and Standard Broadcast Station WMBE, Chilton, Wisconsin (FCC File No. BAL-900711EH). I also held an interest in the company which was formerly the licensee of Television Station WLRE (now Station WGBA), Green Bay, Wisconsin (FCC File No. BRLH-920830JQ), and participated in management and operation of that station and in the management of other television stations owned by that company.
3. I am the Chairman of the Board of Directors and President of TV-52 Inc. TV-52, Inc., is the Permittee for Commercial Television Broadcast Station WWRS-TV, which is to operate on UHF Channel 52, in Mayville, Wisconsin (the "Station"). On September 20, 1995, an application was filed requesting Commission approval for the assignment of the construction permit of the Station from TV-52 Inc. to Mayville Communications, Inc (FCC File No. BAPCT-950921KE).
4. Because of the complexity and difficulty that are involved in the construction and startup of a broadcast station, I employed James Haltaufderheide for his experience and expertise in the community and scheduling and budgetary concerns. James Haltaufderheide was a full time employee of the Station for several years, and performed a variety of services for the company in connection with the steps it took toward construction of the Station. His total compensation which he was paid amounted to in excess of Seventy-One Thousand Dollars (\$71,000.00). Any funds received by James Haltaufderheide were paid only for their consulting services in connection with the Mayville television station.
5. I am the broadcast consultant for Molly Huth, the Permittee of station WMVM(FM), and have performed services in connection with the application for that station, as well as in connection with the construction and eventual operation of WMVM(FM). Ms. Huth and I have considered an arrangement by which I would become an owner of the FM station, but I was always prohibited from becoming an owner because of my ownership of the Mayville television station. However, because of the delays in the construction of the FM station, Ms. Huth has moved her residence away from Mayville where, until recently, she had lived and worked. As I am now selling the TV permit, and as Ms. Huth's desires with the respect to the station have changed because of the delays caused by the FAA problems with station construction. Ms. Huth has agreed to sell the permit to me.

Dec. 7, 1995 3:55PM

NO. 10000 10.0.0

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EXHIBIT A. (continued)

We are in the process of finalizing my purchase of that permit. Once that agreement has been documented, we will file a request for the assignment of that permit with the Commission. Contrary to the allegations of Mr. Heller, I never controlled that permit, as it was under Ms. Huth's control. However, once the FCC approves the sale of that permit to me, and the pending modification application, I expect that the station can quickly be built, as I stated in the newspaper article in the Daily Citizen.

6. The foregoing is true and correct to the best of my knowledge and belief.

Dated: December 7, 1995


Lyle Robert Evans

Exhibit "B".

AS RECORDED AT THE CALUMET COUNTY COURTHOUSE IN CHILTON, WIS.

LIENS, JUDGMENTS AND DOCKETED CLAIMS AGAINST...

PACER RADIO OF WISCONSIN...

IDB COMMUNICATIONS, LOS ANGELES SATELLITE SERVICES \$6,263.00

MASZKA-PACER RADIO, INC...

CITY OF CHILTON 12/92 \$3,982.43

KENNETH AND DAN GROESCHEL \$3,115.39

WEZR-FM RADIO...BRILLION RADIO COMPANY...

UNEMPLOYMENT TAX 7/94 \$1,611.92

UNEMPLOYMENT TAX 10/94 \$568.84

UNEMPLOYMENT TAX 2/95 \$559.12

UNEMPLOYMENT TAX 7/95 \$1,113.52

LYLE ROBERT EVANS, PERSONALLY...

CITY OF CHILTON 11/92 \$656.82

CITY OF CHILTON 3/91 \$3,832.93

THE GROESCHL COMPANY \$3,069.39

ROBERT ARTABASY \$17,647.60

WKTS INC--JULIAN JETZER \$3,722.40

UPDATED 04-22-96 ...NONE OF THE ABOVE LISTED ITEMS WERE SATISFIED.

CERTIFICATION OF SERVICE

I, Mark Heller, certify that on the 22nd day of May, 1996, I forwarded a copy of the enclosed, "COMMENTS AND COUNTER-PROPOSAL REGARDING THE PROPOSED ALLOTMENT OF A SECOND FM CHANNEL AT NEKOOSA, WISCONSIN", via first class United States mail, upon the following

Lyle Robert Evans
The Radio Company and Pacer Radio of Mid-Wisconsin
1296 Marian Lane
Green Bay, WI 54304 (Petitioner and Permittee for WHET-FM, Birnamwood, WI)

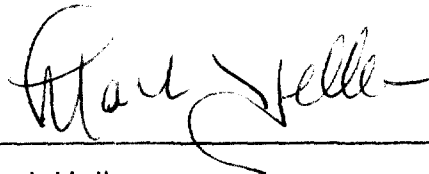
Julie A. Blaser
Wautoma Radio Company
981 Howard Street
Green Bay, WI 54303 (Permittee for WAEI-FM, Wautoma, Wisconsin)

Molly E. Huth
576 West Arndt Street #203
Fond du Lac, WI 54935 (Permittee for WMVM, Mayville, Wisconsin)

Julie Ann Albrecht
Berry Radio Company
1360 Chicago Street
Green Bay, WI 54301 (Permittee for WXEC-FM, Nekoosa, Wisconsin)

Gregory J. Bredael
Nekoosa Broadcasting Company
2349 Eastman Avenue
Green Bay, WI 54302 (Permittee for WCAE-AM, Nekoosa, Wisconsin)

Konrad Herling and Lisa Scanlan (One copy to each person listed)
Federal Communications Commission
1919 "M" Street N.W. Room #332
Washington, DC 20554



Mark Heller